IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LOUIS PRIMUS	:	CIVIL ACTION
	:	
v.	:	
	:	
DETECTIVE BURNOSKY and	:	
IMMACULATE MARY HOME	:	NO. 02-713

MEMORANDUM

Giles, C.J. April ___, 2003

Louis Primus brings this action against Detective Burnosky and Immaculate Mary Home ("Immaculate Mary"), seeking damages pursuant to 42 U.S.C. § 1983, 42 Pa. C.S.A. § 8343, and the common law of the Commonwealth of Pennsylvania, to redress injuries suffered as a result of accusations of sexual misconduct alleged against him while visiting his semi-conscious daughter in a medical facility and the prosecution that resulted. Before the court are Detective Burnosky's and Immaculate Mary's Motions for Summary Judgment made pursuant to Federal Rule of Civil Procedure 56(c). For the reasons that follow, the motions are granted.

Factual Background

The facts in the light most favorable to the non-moving party follow. In 1999, plaintiff's then twenty-four year old daughter, Maria Primus, was struck by a drunk driver and severely injured. The accident left her paralyzed from the neck down and in a semi-vegetated state. Her condition required continual medial care as Ms. Primus could not urinate, eat, or breathe on her own. (Pl.'s Mem. in Opp'n to Summ. Jud. at 2.) The Primus family placed her in Immaculate Mary, a nursing home facility, in September 1999. A gastrointestinal tube was inserted into her abdomen for feeding, and a Foley catheter was inserted into her urethra for urination. (Id. at 2-3.)

Ms. Primus could not move or speak, and had to be repositioned every few hours to avoid bedsores. (Id. at 3.)

Plaintiff and his wife visited Ms. Primus everyday. Usually, Mr. Primus would arrive early in the morning and stay until his wife arrived later in the morning. (Id.) When his wife arrived, he would leave and do errands before returning to spend more time with Ms. Primus and to take his wife home. (Id.) On numerous occasions during Ms. Primus's care at Immaculate Mary, the Foley catheter had kinked or dislodged, causing the bed to become saturated with urine. (Id.) Nursing home records indicate that the catheter had dislodged on at least sixteen occasions between September 1999, when Ms. Primus was admitted, and December 2000. (Id. at 4; Pl.'s Ex. 1.) The Primus family states that they would routinely check Ms. Primus's catheter and her sheets, to insure that she was dry. (Pl.'s Mem. in Opp'n to Summ. Jud. at 3.)

On December 19, 2000, Mr. Primus arrived at Immaculate Mary at or around 5:00 a.m. to visit his daughter. (Id. at 4.) The day before, Mr. Primus was told that his daughter was running a temperature. (Id.) When Mr. Primus arrived that morning, the nurse's aide, Dawn Roberts, was in Ms. Primus's room. (Id. at 5.) The hospital room was semi-private. It was shared by another patient, who was situated in a bed approximately three feet from Ms. Primus's bed. The beds were separated by a hanging curtain. (Id. at 4.) When plaintiff entered the room, Ms. Roberts had just finished attending to Ms. Primus and was moving around the curtain to assist the other patient. (Id. at 5.) Ms. Primus was positioned on her left side, with her back to the bed of the other patient. (Id.) In a fetal position, she had a pillow between her legs and was covered with a sheet. (Id. at 5-6.)

Mr. Primus sat in a chair next to his daughter's bed while Ms. Roberts began attending

the other patient. (Id. at 6.) At 5:20 a.m., Ms. Roberts looked over and saw Mr. Primus with his hand underneath the sheet. (Id.) Ms. Roberts later stated that he appeared as if "his mind was in a pleasure state." (Det. Burnosky's Ex. C, Roberts Int. at 2.) She stated that while plaintiff's hand was under the sheets, Ms. Primus was grunting and groaning. (Crim. Trial Tr. at 36.)

Ms. Roberts left the room without speaking to Mr. Primus. She told her supervisor, Suja Abraham, that Mr. Primus had his hands "underneath the sheets" and "between [Ms. Primus's] legs." (Pl.'s Mem. in Opp'n to Summ. Jud. at 6.) Ms. Roberts also stated that plaintiff was a "pervert" and that she believed he was acting in an inappropriate and sexual manner. (Imm. Mary's Mem. of Law in Supp. of Summ. Jud. at 3.) Ms. Abraham waited ten to fifteen minutes and then went Ms. Primus's room, where she found that Mr. Primus had left and Ms. Primus was sleeping comfortably. (Id. at 4.) Ms. Abraham then prepared a memo to Melissa Welch, Immaculate Mary's Director of Social Services, detailing the comments made to her by Ms. Roberts. (Pl.'s Mem. in Opp'n to Summ. Jud. at 7.)

This memo was later received by Stuart Skinner, Immaculate Mary's Administrator, who called Ms. Roberts into his office and questioned her about the incident. (Skinner Dep. at 14, 63.) During that interview, she stated that she had seen the sheet moved to the side, and that she saw plaintiff "rubbing [Ms. Primus's] private parts." (Id. at 27.) Mr. Skinner was aware that Ms. Roberts and Mr. Primus had had prior interpersonal difficulties. (Skinner Dep. at 27.) Previously, Ms. Roberts had reported that Mr. Primus had touched her shoulders inappropriately and without consent. (Id.) Mr. Primus had denied any wrongful conduct, claiming that he had merely tried to rub her shoulders as an act of friendship. (Imm. Mary's Mem. of Law in Supp. of Summ. Jud. at 12.)

Mr. Skinner next questioned Mr. Primus concerning the allegations of sexual abuse. (Pl.'s Mem. in Opp'n to Summ. Jud. at 7.) Mr. Primus denied any wrongdoing, and stated that he was merely checking on his daughter's catheter and temperature. (Id. at 7-8.)

On January 5, 2001, by telephone Mr. Skinner's office notified the Department of Heath, the Department of Aging, and Adult Protective Services of the December 19, 2000 report of Ms. Roberts. (Imm. Mary's Ex. 18.) These agencies directed that notification and copies of reports be sent to related state agencies.

Mr. Skinner also interviewed two nurses, Ms. Abraham and Leela George ("Ms. George"), to obtain information that could be relevant to the incident. (Imm. Mary's Mem. of Law in Supp. of Summ. Jud. at 5.) Ms. George described to him an incident where she had entered Ms. Primus's room and had seen plaintiff with his hands under her covers in the lap area. (Id.) She also stated that on that occasion Ms. Primus's face was flushed and that she appeared anxious and restless and was trying to make noise. (Imm. Mary's Mem. of Law in Supp. of Summ. Jud. at 5.) As she approached the bed, Mr. Primus removed his hands suddenly, with a look of fear or embarrassment, and did not reply when Ms. George asked if he needed help. (Id.) She further stated that Ms. Primus calmed down when she told Ms. Primus that she was there. (Id.)

Through further investigation Mr. Skinner learned that another nurse's assistant, Stephanie Jones, also claimed to have seen Mr. Primus with his hand underneath his daughter's covers. (Immaculate Mary's Ex. 12.) Ms. Abraham essentially reported Ms. Robert's claims as above stated.

Mr. Skinner then met with Ms. Primus's husband and legal guardian, Matthew Krapp, and

told him that an allegation of sexual abuse had been made against Ms. Primus, that Immaculate Mary was required to investigate the allegation and report it to the State, and that Mr. Primus would be allowed to visit Ms. Primus only in the presence of his wife or son-and law. (Imm. Mary's Mem. of Law in Supp. of Summ. Jud. at 6.)

Mr. Skinner also met with plaintiff in the presence of the Chaplain, Father Tom. (Id. at 7.) There, Mr. Skinner told Mr. Primus that on or about December 19, 2000, a nursing aide had made an allegation that he had inappropriately touched his daughter in the vaginal area. (Id.) Mr. Primus did not deny that Ms. Roberts observed him with his hands under his daughter's sheets, but again stated that he had only been checking on Ms. Primus's circulation and temperature. (Id.) During that meeting, Mr. Primus was also told that the law required Immaculate Mary to report such allegations to authorities and that he would be prohibited from visiting his daughter without his wife or son-in-law present until the claim of misconduct was resolved. (Id.)

On January 18, 2001, Immaculate Mary filed its written report of the allegation against Mr. Primus on Form PB-22 to the Department of Health. As instructed by the Department of Health, it reported the claimed incident to the Pennsylvania Department of Aging and to the Philadelphia Police Department's Special Victims Unit. (Id. at 8.) The report included statements from Ms. Roberts's interview that she had seen plaintiff "rubbing and foundling (sic) Ms. Primus' buttocks and vaginal area." (Id.) Mr. Skinner's PB-22 report also expressly noted that plaintiff and Ms. Roberts had experienced a prior personal conflict, and that Ms. Roberts had alleged at that time that Mr. Primus had tried to rub her shoulders in appropriately. (Pl.'s Ex. 4.) In the "Conclusions" section of the report, Mr. Skinner wrote: "There is the distinct possibility

that the incident occurred; however, there is also the possibility that Dawn Roberts made this accusation to retaliate for an unwanted advance by Mr. Primus. . ." (Pl.'s Ex. 4.)

On January 19, 2001, Detective Norman Burnosky, of the Philadelphia Police Department, was assigned to investigate the allegation against plaintiff. (Id. at 9.) On February 3, 2001, he interviewed Ms. Roberts and obtained from her a signed interview acknowledgment. (Id. at 10.) Ms. Roberts told him that she had observed plaintiff with one hand "caressing [Ms. Primus's] buttocks" and the other hand "on her private area where the foley would be." (Det. Burnosky's Ex. E, Roberts Int. at 1.) She also stated that Ms. Primus's bedcovers were not where she had left them, and that she believed something was improper was going on because plaintiff appeared to be in a "pleasure state." (Id. at 1-2.)

On February 13, 2001, he conducted telephone interviews of Ms. George and Dr. Arturo Ferreira, one of the doctors attending Ms. Primus. (Imm. Mary's Mem. of Law in Supp. of Summ. Jud. at 10.) Dr. Ferreira confirmed that Ms. Primus had severe brain damage, suffered from some paralysis, and that she was in a coma-like state and unable to communicate. (Id. at 11.) Ms. George told the detective that several months earlier, when she had entered Ms. Primus's room, plaintiff had suddenly pulled his hand out from under the blanket where it had been in Ms. Primus's private area. (Id.) Ms. George also told Detective Burnosky that Ms. Primus "seems anxious when her father is there." (Id.)

On February 14, 2001, Detective Burnosky spoke to Mr. Krapp, and with Mr. Krapp's permission attempted to interview Ms. Primus, though without success. (Id.) Later on the same day, Detective Burnosky conducted an interview with Mr. Primus and obtained a signed acknowledgment from him. (Id.) Mr. Primus told the detective that on the day in question he

had been checking Ms. Primus's temperature below the knees, and that he had checked the urine to see if the feed was leaking, as he did everyday. (Id.) Mr. Primus denied pulling the blanket down or engaging in any wrongdoing. (Id.) He told the detective that his actions were being misinterpreted because the nurses did not like him due to his broken English and immigrant status. (Id. at 11-12.) When asked if he had ever touched any of the nurses when he was visiting his daughter, Mr. Primus replied, "Just the shoulders. It was friendship. It was not because I want to go to bed with them." (Id. at 12; Det. Burnosky's Ex. E, Primus Int. at 2.)

After completing these interviews, Detective Burnosky determined that there was sufficient probable cause to charge plaintiff with indecent assault. (Id. at 12.) Accordingly, Detective Burnosky drafted an Affidavit of Probable Cause that summarized the facts known to him, including, Ms. Roberts's observations of plaintiff's conduct, Ms. George's prior observations, and Dr. Ferreira's assessment of Ms. Primus's inability to communicate. (Id.) He submitted the Affidavit to the Philadelphia District Attorney's Office for its decision on the matter. (Id.) On March 11, 2001, plaintiff was charged by the District Attorney with indecent assault (18 Pa. C.S.A. § 3126), simple assault (18 Pa. C.S.A. § 2701), false imprisonment (18 Pa. C.S.A. § 2903), unlawful restraint (18 Pa. C.S.A. § 2902), and recklessly endangering another person (18 Pa. C.S.A. § 2705). (Det. Burnosky's Mem. of Law in Supp. of Summ. Jud. at 8.) He was arrested on the District Attorney's warrant and taken into custody. (Id.) At that time he was told the specific allegations against him. (Id.)

On January 2, 2002, a bench trial was held before Judge Martin Bashoff. (Crim. Trial Tr.) At trial, Ms. Roberts testified consistently with her prior interviews, stating that she could not see exactly where Mr. Primus's hand was, but that it was in "the vagina area." (Crim. Trial

Tr. at 34.) Mr. Primus testified consistently that he had been merely checking his daughter's catheter and had not touched his daughter in an inappropriate manner. (Id. at 85.) Mr. Primus was acquitted of all charges. He filed this civil action in state court on February 4, 2002. It was removed to this court on February 12, 2002.

Discussion

Summary Judgment Standard

Under Fed. R. Civ. P. 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary judgment as a matter of law." Celetox Corp. v. Catrett, 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56(c). In order to avoid summary judgment, disputes must be both 1) material, meaning concerning facts that are relevant and necessary and that might affect the outcome of the action under governing law, and 2) genuine, meaning the evidence must be such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Summary judgment is mandated against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, because such a failure as to an essential element necessarily renders all other facts immaterial. Celetox, 477 U.S. at 322-23. In such a case, there can be but one reasonable conclusion as to the verdict under the governing law and judgment must be awarded in favor of the moving party. Anderson, 477 U.S. at 250 (noting that the standard is the same as on a motion for judgment as a matter of law under Fed. R. Civ. P. 50(a)).

The party seeking summary judgment bears the initial responsibility of informing the

court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celetox, 477 U.S. at 323. The moving party is not required to produce any evidentiary materials to negate the opposing party's claim. Id. The burden then shifts to the nonmoving party to designate, though the use of and affidavits and other evidentiary materials of record, specific facts showing that there is a genuine issue for trial. Id. at 324; Fed. R. Civ. P. 56(e). The evidence of the nonmoving party is to be believed and this court must draw all reasonable and justifiable inferences in its favor. Anderson, 477 U.S. at 255. However, it is clear from the rules and Supreme Court decisions that the nonmoving party must present to the court some competent evidence from which the court can draw such inferences.

Detective Burnosky

Qualified Immunity

"In evaluating a claim of qualified immunity, we must first be determine whether the plaintiff has properly asserted a deprivation of a constitutional right; then we can consider whether the right was clearly established at the time of the alleged violation." Schieber v. City of Philadelphia, 320 F.3d 409, 416 (3d Cir. 2003) (citing Wilson v. Layne, 526 U.S. 603, 609 (1999)). Here, plaintiff asserts that the investigation of the allegations against him, and the resulting arrest, were carried out in such a manner that his Fourth and Fourteenth Amendment rights were violated. The court will first consider if plaintiff properly raises a constitutional claim, and if so shown, will further address the issue of qualified immunity.

§ 1983

Plaintiff alleges that Detective Burnosky falsely arrested him in violation of the Fourth Amendment. That Amendment prohibits a police officer from arresting a person except upon

probable cause. Orsatti v. New Jersey State Police, 71 F.3d 480, 482 (3d Cir. 1995). Probable cause exists "when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested." Id. at 483. Here, it is undisputed that, on its face, the Affidavit of Probable Cause submitted by Detective Burnosky establishes probable cause. Plaintiff alleges that Detective Burnosky knowingly or recklessly disregarded the truth in drafting his Affidavit in that materially false statements and omissions were made to assert probable cause where probable cause did not otherwise exist. (Complaint ¶¶ 14-15.)

A claim of judicial deception is governed by the standards set out in Franks v. Delaware, 438 U.S. 154 (1978). Under Franks, a plaintiff may succeed in a § 1983 action for false arrest made pursuant to a warrant only if the plaintiff can establish by a preponderance of the evidence: 1) that the police officer knowingly and deliberately, or with reckless disregard for the truth, made false statements or omissions that create a falsehood in applying for a warrant; and 2) that such statements or omissions are material, or necessary to the finding of probable cause. Wilson v. Russo, 212 F.3d 781, 786-87 (3d Cir. 2000). If a judicial officer could conclude that the defendant's affidavit is sufficient to establish probable cause, the defendant is entitled to judgment. Although plaintiff here has asserted the existence of materially false statements or omissions, he has presented no evidence that Detective Burnosky acted with knowledge that the report of misconduct by plaintiff contained in his Affidavit was false. Indeed, the undisputed evidence is that Ms. Roberts testified under oath at trial that she believed her report to be true and that the report of her statement in the Affidavit was materially accurate in all respects. Thus, the only avenue possibly open to plaintiff is to attempt to show that the detective, in submitting his

affidavit, acted with reckless disregard for some investigated truth, knowing of its material omission or misstatement relative to the affidavit's contents.

Plaintiff relies on United States v. Stanert, 762 F.2d 775 (9th Cir. 1985). An affidavit was found to be materially misleading when a law enforcement agent stated therein that the defendant had a prior drug arrest, without stating that there had been an acquittal, and implied that a witness had personally observed the defendant engaged in drug activity, though such observations had not occurred. Plaintiff argues that similarly Detective Burnosky "report[ed] less than the total story . . . , manipulat[ing] the inferences the magistrate will draw." Id. at 781.

To determine the materiality of the misstatements and omissions in the affidavit for arrest, the alleged offending inaccuracies must be excised and the alleged recklessly omitted informations must be added. It may be determined then whether the "corrected" warrant affidavit establishes probable cause. Id. at 789.

Misstatements

Plaintiff alleges that the material false statements made by Detective Burnosky are:

1) that Detective Burnosky deliberately altered Ms. George's statement when he wrote that she saw his hand "underneath the blanket and near [Ms. Primus's] vaginal area." (Det. Burnosky's Ex. F, Aff. of Prob. Cause.);

2) that Detective Burnosky "purposely fudged" the time of the incident, stating it was at 4:30 a.m., instead of the actual time of 5:20 a.m., to create the false impression that touching occurred early enough that few people would be expected to enter the room (Pl.'s Mem. of Law in Opp'n to Summ. Jud. at 20); and

3) that Detective Burnosky "subtly suggested" that the curtain, dividing Ms. Primus's bed from her roommate's, was pulled for plaintiff's privacy, when this fact has not been established in the record. (Id. at 21.)

"An assertion is made with reckless disregard when 'viewing all the evidence the affiant must

have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported." Wilson v. Russo, 212 F.3d 781, 788 (3d Cir. 2000) (quoting United States v. Clapp, 46 F.3d 795, 801 n.6 (8th Cir. 1995)). Applying this test here, the court is compelled to conclude that Detective Burnosky did not have, and could not have had, reason to "entertain serious doubts as to the truth of his statements." Wilson, 212 F.3d at 788.

First, plaintiff argues that Detective Burnosky created a "blatant falsehood" known to be false by stating in the Affidavit that Ms. George saw Mr. Primus's hand "near [Ms. Primus's] vaginal area." (Pl.'s Mem. of Law in Opp'n to Summ. Jud. at 20.) Plaintiff argues that Ms. George's statement indicates only that "Mr. Primus may have been simply touching his daughter's leg." (Id.) The record shows, however, that when, on February 13, 2001, Detective Burnosky interviewed Ms. George by telephone, he made notes summarizing her statement. Those notes show that he recorded her recollection as: "[Mr. Primus's] hand was under the blanket in her private area (vagina)." (Det. Burnosky's Ex. D.) At trial, Ms. George testified that she saw Mr. Primus with his hand "under the blanket in [Ms. Primus's] lap area." (Crim. Trial Tr. at 65.) "Lap area" excludes the breast area, which could also be a private area. The trial testimony confirms Detective Burnosky's Affidavit statement, since Ms. George's use of the phrase "lap area" shows that she recalled seeing plaintiff's hand where it could have reached his daughter's vagina. In her oral deposition taken in this matter, Ms. George reiterated that she saw Mr. Primus "taking off [his] hand from [Ms. Primus's] lap area." (George Dep. at 32.) It is undisputed, though, that when the affidavit was prepared Ms. George's recollection was that when she entered the hospital room Mr. Primus suddenly withdrew his hand from under the blanket and that it had been in his daughter's lap area. The terms "lap area" and "private area"

can be reasonably understood as being "in the vaginal area." The Affidavit does not relate any more than that Ms. George had stated that on a prior occasion she had seen plaintiff's hand under Ms. Primus's blanket "near her vaginal area." The affidavit does not state, as plaintiff argues, that Ms. George stated that plaintiff's hand was in the vagina of his daughter.

Plaintiff alleges that Detective Burnosky "purposely fudged" the time of plaintiff's alleged inappropriate contact, stating that it occurred at 4:30 a.m., rather than at 5:20 a.m., in order to create a false impression that Ms. Primus's room would have been more secluded at that hour, and giving opportunity for criminal conduct. However, during her interview, Ms. Roberts told Detective Burnosky that she witnessed the event at 4:30 a.m. and that is reflected in her signed statement. (See Det. Burnosky Ex. C, Roberts Int. at 3.) Even though the PB-22 report filed by Immaculate Mary Home stated that the event took place at 5:20 a.m., (see PB-22 Report at 1) the detective was privileged through his independent investigation to report accurately Ms. Roberts's recollection. Ms. Roberts was the sole witness to the event. Therefore, plaintiff's assertion of falsity or false light fails.

Plaintiff also argues that Detective Burnosky distorted the truth when he stated that the curtain, dividing Ms. Primus's bed from her roommate's, was pulled for plaintiff's privacy. In her interview with the detective, Ms. Roberts stated that she had pulled the curtain before she had gone to care for Ms. Primus's roommate. Detective Burnosky wrote in the Affidavit that the curtain had been pulled "so [Ms. Primus's] father could visit with her." Plaintiff offers that this is an inaccuracy that is material because the curtain had been for the privacy of the other patient in the room. However, the fact was that the privacy curtain was closed such that Mr. Primus could visit with privacy and, therefore, could have used the opportunity to do that which he

would not have otherwise attempted in plain view. It is immaterial why the curtain had been drawn. The curtain pulled provided privacy to both patients. Accordingly, the argument also fails.

Omissions

Plaintiff also alleges that his Fourth Amendment rights were violated because there were two material omissions from the affidavit:

1) that Detective Burnosky misstated Ms. Roberts's recollection, by stating that plaintiff's hand was "in [Ms. Primus's] vaginal area," without adding information developed through his investigation that Ms. Roberts's stated that his hand was "where the foley would be" and that she "couldn't really tell what his right hand was doing."; and

2) Detective Burnosky deliberately omitted a complete and accurate history of Ms. Primus's medical condition and special needs, including that the foley catheter had tendency to either dislodge or kink up, causing bedwetting, and that Ms. Primus had a pillow between her legs that required repositioning.

The foley catheter was inserted in Ms. Primus's urethra, which automatically is located the vaginal area. The District Attorney's Office must be presumed to have appreciated from plaintiff's statement from plaintiff's statement contained in the Affidavit that he was checking Ms. Primus's urine tube and that he was claiming that he was doing so for an innocent reason, to provide care for his daughter that was being omitted by the nursing staff. These arguments fail because the Affidavit was materially accurate as to both the statements of plaintiff and Ms. Roberts.

Plaintiff asserts that Detective Burnosky deliberately omitted Ms. Roberts's statement that she "couldn't really tell what [Mr. Primus's] right hand was doing." (Pl.'s Mem. of Law in Opp'n to Summ. Jud. at 22.) Plaintiff argues that because Ms. Roberts could not see plaintiff's

hand movements under the covers, the detective knew that she was uncertain about the claimed criminal conduct. However, the essence of Ms. Roberts's statement was that plaintiff had no reason to have his hands in Ms. Primus's vaginal area because she had just checked her and that he appeared to be deriving sexual gratification from his actions. She stated that she had a clear view of plaintiff's hands, that one was "caressing her buttocks" and the other was "between her legs," and that when she came upon plaintiff that "his mind was in a pleasure state." (Det. Burnosky's Ex. C, Roberts Int. at 1-2.) The fact that Ms. Roberts could not determine the exact nature of what plaintiff's right hand, located between Ms. Primus's legs, was doing before he withdrew it, did not contradict the inculpatory nature of her observations for purposes of probable cause analysis. While this lack of specific knowledge might have created reservations of innocence in the mind of the ultimate factfinder, the totality of Ms. Roberts's report was at least as consistent with plaintiff's guilt as with his innocence. Further, if plaintiff had had concerns about whether the foley catheter was properly inserted and working, the Affidavit showed that Ms. Roberts was in the room and that her nursing assistance could have been sought had plaintiff's intentions been innocent.

Plaintiff argues that Detective Burnosky deliberately omitted Ms. Primus's full medical history, particularly the complications that she had experienced with leaking catheters and her need for a pillow between her legs, suggesting that the nursing care was so unreliable that the father was entitled to perform the nursing function himself. However, this argument fails to appreciate that the family had committed the patient to the nursing care of the home, and that it had a duty to protect the patient from possible abuse, even from parents. Before writing his Affidavit, the detective interviewed Ms. Roberts, Ms. George, Dr. Ferreira, and Mr. Primus.

None of the notes from any of these interviews mention prior problems with leakage from the catheter, or the pillow between Ms. Primus's legs. While Mr. Primus did mention that he "check[ed] everyday" on his daughter's urine and feeding tubes, he did not state that he did so based on past incidents of bedwetting. (See Det. Burnosky's Ex. E.) Further, when questioned Mr. Primus also did not claim to the detective that he was making adjustments to the pillow between his daughter's knees. A police officer is not required to forego arrest pending further investigation if the facts as initially discovered provide probable cause. Baker v. McCollan, 443 U.S. 137 (1979). Ms. Roberts's statement, independent of the alleged omissions, was sufficient for probable cause. Plaintiff has no claim against Detective Burnosky for failing to discover the details of Ms. Primus's catheter and pillow prior to compiling the Affidavit.

Lastly, plaintiff argues that negligent investigation of Detective Burnosky was a violation of his Fourteenth Amendment due process rights. Negligence by a police officer in conducting an investigation is not actionable as a due process deprivation. Wilson v. Russo, 212 F.3d 781, 788 n.5 (3d Cir. 2000); see also Orsatti v. New Jersey State Police, 71 F.3d 480, 484 (3d Cir. 1995).

Because there was no constitutional violation occurred, there is no need to address the issue of qualified immunity. See Schieber v. City of Philadelphia, 320 F.3d 409, 423 (3d Cir. 2003).

State Law Claims

Plaintiff also asserts state law claims for malicious prosecution, false imprisonment, defamation, intentional infliction of emotional distress, abuse of process, and invasion of privacy. (Complaint Counts II-VII.) Plaintiff cannot recover under any of these claims as each is barred

by the Pennsylvania Political Subdivision Tort Claims Act ("Tort Claims Act") and he has presented no evidence of willful misconduct by Detective Burnosky.

The Tort Claims Act states, "[e]xcept as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by an act of the local agency or employee thereof . . ." 42 Pa. C.S.A. § 8541. The Tort Claims Act provides that a municipal employee may be personally liable for tortious conduct when the conduct constitutes a "crime, actual fraud, actual malice, or willful misconduct." 42 Pa. C.S.A. § 8550.

An individual has engaged in willful misconduct when there was a desire to bring about the result that followed, or at least one that was substantially certain to follow. See Renk v. City of Pittsburgh, 641 A.2d 289, 293 (Pa. 1994) (citing Evans v. Philadelphia Transportation Co., 212 A.2d 440 (1965)). Willful conduct requires proof of an "intention to do what is known to be wrong, namely intention . . . to arrest and imprison somebody when the officer knows that he does not have probable cause to make the arrest in question." In re City of Philadelphia Litigation, 938 F. Supp. 1278, 1289 (E.D. Pa. 1996). Plaintiff has not adduced any evidence that Detective Burnosky engaged in willful misconduct. There is record evidence that his investigation uncovered reasons that established probable cause for an arrest warrant. Thus, all of plaintiff's state tort claims against Detective Burnosky are barred by the Tort Claims Act.

Immaculate Mary Home

Respondeat Superior

Plaintiff argues that all of his state law claims arise from actions by Ms. Roberts and Mr. Skinner, "both of whom were acting within the scope and course of their employment with the

home when they made and disseminated false and disparaging allegations of sexual abuse." (Pl.'s Mem. of Law in Opp'n to Summ. Jud. at 26.) Plaintiff contends that under the doctrine of respondeat superior Immaculate Mary is liable for all of these alleged intentional torts.

The doctrine of respondeat superior holds employers legally responsible for the wrongful acts of his employee, but only if those acts were committed within the scope of employment and during the existence of the employment relation. DeFrancesco v. Western Pennsylvania Water Co., 478 A.2d 1295, 1304 n.8 (Pa. Super. Ct. 1984) (citing Black's Law Dictionary (4th ed. 1957). For an act to be considered in the scope of employment, conduct must satisfy the following criteria: 1) it must be the kind the actor was employed to perform; 2) it must occur substantially within the authorized time and space limits; and 3) it must be actuated, at least in part, by a desire to serve the master. Shuman Estate v. Weber, 419 A.2d 169, 173 (Pa. Super. Ct. 1980). Described in another way, there must be a showing of benefit to the employer arising from the employee's activity during the scope of employment. Mauk v. Wright, 367 F. Supp. 961, 966 (M.D. Pa. 1973); see also Iandiorio v. Kriss & Senko Enterprises, Inc., 517 A.2d 530, 533 (Pa. 1986). Determination of the precise nature and scope of any particular employment relationship is generally within the exclusive province of the jury, except when no dispute exists as to material issues of fact and the inferences to be drawn therefrom. Norton v. Railway Express Agency, Inc., 412 F.2d 112, 114 (3d Cir. 1969).

Here, plaintiff only brings suit against Immaculate Mary. Success in this suit is dependent upon proof that the alleged tortious acts performed by employees Roberts and Skinner were committed within the scope of their employment. In order to proceed to trial, plaintiff must be able to demonstrate a material issue of fact concerning whether the employees were acting in

the course of their employment by reporting the alleged actions of Mr. Primus.

Taking the facts in the light most favorable to the plaintiff, all events began when Ms. Roberts intentionally entered a false report against him, alleging that she saw him inappropriately touching his daughter. Plaintiff contends that she did this "in part as retaliation for criticism relating to the care of plaintiff's daughter, as well as to an unwelcome gesture supposedly made by Mr. Primus a month earlier." (Pl.'s Mem. of Law in Opp'n to Summ. Jud. at 28.) Given this characterization of the facts, plaintiff cannot succeed on a contention that her actions were for the benefit of Immaculate Mary. Plaintiff specifically argues that "the communications were activated by malice on the part of Dawn Roberts."[1] (Id. at 29.) If Ms. Roberts acted maliciously, she did not serve her employer. Lying to an employer to obtain revenge against a patient's parent for personal reasons is totally antithetical to the nurse's duty to their employee. Thus, Immaculate Mary could not be responsible under the doctrine of respondeat superior for Ms. Roberts's alleged intentional torts as a matter of law.

Plaintiff argues that Mr. Skinner, Immaculate Mary's Administrator, acted inappropriately in dealing with the allegations against Mr. Primus. The record shows that Mr. Skinner received the allegation made by Ms. Roberts, interviewed several nurses, filed a report to appropriate state agencies, and then followed-up with further requested information. Plaintiff alleges there was "at least negligence - if not recklessness - on the part of Mr. Skinner who further distorted the account, concealed documents and then disseminated [a] false report. . . ."

[1] Plaintiff does not allege that Ms. Roberts was merely negligent in making her report about Mr. Primus. Even if such allegation was made, Immaculate Mary still would not be liable, under the same analysis detailed for Mr. Skinner.

(Pl.'s Mem. of Law in Opp'n to Summ. Jud. at 29.) Plaintiff has not identified any documents that were concealed from the state agencies to which the home had a reporting duty. Conclusory statements that Mr. Skinner's investigation was not in "good faith" and that the report was not "complete and accurate" do not substitute for evidence. (Id. at 29.) Plaintiff alleges that Mr. Skinner behaved actionably because he disseminated the report concerning Mr. Primus "not only to the Department of Health, but also to a number of other organizations." (Id.) However, as Administrator at Immaculate Mary, Mr. Skinner was required by law to notify state authorities of allegations of potential abuse. Mr. Skinner did briefly investigate Ms. Roberts's allegation before notifying the required agencies. The imposed duty was one of reporting and not criminal investigation. In the PB-22 report, Ms. Roberts's allegations were accurately stated with the caveat that the accusations could have been made as a result of a contentious relationship between Ms. Roberts and Mr. Primus. (See PB-22 Report, sect. IV.) In notifying the relevant health agencies and in filing the PB-22 Report, Mr. Skinner was acting within the dictates of state law. Plaintiff has pointed to no state law that would have excused the reports to the Department of Health and the agencies identified by that department's instructions.

Defamation

In order to establish a cause of action for defamation, a plaintiff must plead and prove the following elements: 1) that the defendant made a defamatory communication; 2) about the plaintiff; 3) that was published to a third party; 4) who understood the defamatory meaning of the communication about the plaintiff; 5) where the plaintiff suffered special harm as a result of the communication; and 6) that any privilege invoked by the defendant was abused. 42 Pa. C.S.A. § 8343. Plaintiff alleges Mr. Skinner defamed him by disseminating the report of alleged abuse to

various state agencies and organizations. Immaculate Mary argues that any defamation claims fails because plaintiff did not timely raise it, any communication was privileged, and any communication was true.

Statute of Limitations

The statute of limitations for a defamation action is one year. 42 Pa. C.S.A. § 5523(1). Plaintiff's alleged defamation claim arises from reports made by Mr. Skinner to various state agencies. Mr. Skinner's office began contacting these agencies on January 5, 2001. (Imm. Mary's Ex. 18.) Per the Department of Health's request, a formal PB-22 Report was filed by Mr. Skinner on January 18, 2001. (Imm. Mary's Ex. 19.) Plaintiff did not bring this action until February 12, 2002, over a year after Mr. Skinner's reports had been issued. Plaintiff asserts that he did not know what the report said, or who filed it, until he was arrested on March 11, 2001. (Pl.'s Mem. of Law in Opp'n to Summ. Jud. at 27.) Due to his alleged lack of knowledge, plaintiff argues that the discovery rule should toll the limitation period. (Id.)

The discovery rule is an exception to the statue of limitations. Gatling v. Eaton Corp., 807 A.2d 283, 289 (Pa. Super. Ct. 2002). It provides that "where the existence of the injury is not known to the complaining party and such knowledge cannot be reasonable ascertained within the prescribed statutory period, the limitations period does not begin to run until the discovery of the injury is reasonably possible." Id. The discovery rule does not excuse the plaintiff from mistake or lack of knowledge concerning the injury, rather it arises "out of an '. . . *inability* of an injured *despite the exercise of due diligence*, to know of the injury or its cause.'" Gallucci v. Phillips & Jacobs, Inc., 614 A.2d 284, 288 (Pa. Super. Ct. 1992) (quoting Pocono International Raceway v. Pocono Produce, 468 A.2d 468, 471 (1983)).

Plaintiff argues that he did not know the details of the report until his arrest on March 11, 2001. However, not knowing exactly what the report said is an insufficient basis to apply the discovery rule. On January 4, 2001, before any report was filed, Mr. Skinner met with Mr. Primus and informed him that a nurse had made an allegation that he had inappropriately touched his daughter. (Imm. Mary's Ex. 15.) Mr. Skinner further informed Mr. Primus that he was required by state law to notify the Department of Health of the allegation. In Mr. Skinner's notes of this meeting, he explicitly writes that, "Mr. Primus stated that he understood and he agreed to cooperate in any manner requested." (Id.) On January 26, 2001, Mr. Primus was further informed that such reports had been filed, and that the police were conducting an investigation into the matter. (Imm. Mary's Ex. 17.) Again, the notes indicate that, "Mr. Primus indicated that he understood . . . ." (Id.) Based on this information, plaintiff was not only able to know of the alleged defamatory report within the statutory time period, but did in fact know of it before it was even issued. Thus, the discovery rule is inapplicable. Plaintiff's defamation claim fails as a matter of law for failure to file within the statutory time period.

Privilege

Even if plaintiff's defamation claim had been timely raised, it would still fail because the communication was privileged. To be privileged, alleged defamatory communications must have been made upon a proper occasion, from a proper motive, and in a proper manner, and must be based upon reasonable or probable cause. Miller v. Hubbard, 207 A.2d 913, 916 (Pa. Super. Ct. 1965). The defense of privilege is based upon the theory that potentially actionable conduct is protected because the defendant was pursuing some interest other that his own–a third person or the public–that is entitled to protection even at the expense of uncompensated harm to the

plaintiff's reputation. Berg v. Consolidated Freightways, Inc., 421 A.2d 831, 834 (Pa. Super. Ct. 1980) (citing Corabi v. Curtis Pub. Co., 273 A.2d 899, 909 (Pa. 1971)). A communication is privileged where it involves the reporting of a matter of law. See, e.g., Waye v. First Citizen's Nat'l Bank, 846 F. Supp. 310 (M.D. Pa.), aff'd, 31 F.3d 1175 (3d Cir. 1994). Immaculate Mary was required under Pennsylvania law to immediately notify the Department of Health, investigate, and file a written report "when an incident of resident abuse, neglect, or misappropriation of property is alleged or suspected." (Imm. Mary's Ex. 1, Penn. Dep't of Health Long Term Care Provider Bulletin No. 22.)

Under Pennsylvania law, such reports by long term care providers are conditionally privileged. Thus, the reports are protected unless they the statements contained therein were made negligently, in reckless disregard to their truth or falsity, or with a malicious purpose. Rauch v. Spotts, No. 91-326, 1993 WL 761645, *4 (Pa. Com. Pl. Apr. 15, 1993) (en banc). While plaintiff alleges Mr. Skinner acted recklessly or negligently in issuing the report, he does not cite any facts that create a material issue of fact regarding Mr. Skinner's intent. Plaintiff states that Mr. Skinner "concealed documents" but does not indicate what precisely was concealed. (Pl.'s Mem. of Law in Opp'n to Summ. Jud. at 29.) Certain papers, including the statement made by Ms. George, were not attached to the report. However, the report stated that an investigation was on-going. Therefore, the complete file of the home's investigation could have been requested at any time. It appears that the only information that was not included in the PB-22 Report was the fact that Ms. Primus's catheter had dislodged on several occasions prior to the incident. Moreover, the fact was not material because there still would have been cause to believe Mr. Primus had acted inappropriately based on Ms. Roberts's statement and the

supporting statements from other nurses.

Plaintiff also alleges that Mr. Skinner acted recklessly or negligently by distributing the report to organizations beyond the Department of Health and law enforcement. (Pl.'s Mem. of Law in Opp'n to Summ. Jud. at 29.) Mr. Skinner's office was directed, by the Department of Health to inform such offices. (Imm. Mary's Mem. of Law in Supp. of Summ. Jud. at 8.) Their notification was part of the required state procedures.

Truth

Plaintiff's defamation also fails because the statements made by Mr. Skinner on the report to the health agencies were true, that is, Ms. Roberts did make the accusation. Truth is an affirmative defense to a claim of defamation. 42 Pa. C.S.A. § 8343. The PB-22 Report accurately recounted the allegations made by Ms. Roberts. It did not conclude that Mr. Primus's conduct was inappropriate or illegal. It offered an alternative explanation of why the allegations may have been made. (See PB-22 Report, sect. IV.) Plaintiff does not dispute that the report is accurate, but claims that the allegations Ms. Roberts made are not true. Because Mr. Skinner's Report was true, it cannot, as a matter of law, constitute an act of defamation.

Invasion of Privacy

Plaintiff alleges a cause of action for invasion of privacy. The right of privacy is a qualified right to be let alone, and to be actionable the invasion of that right must be unlawful or unjustifiable. Lynch v. Johnston, 463 A.2d 87 (Pa. Commw. Ct. 1983). Mr. Primus avers that Immaculate Mary intruded upon his seclusion and placed him in a false light.

To properly raise a claim for intrusion upon seclusion, a plaintiff must allege that: 1) there was an intentional intrusion; 2) upon the solitude or seclusion of plaintiff, or his private

affairs or concerns; and that the intrusion was 3) substantial; and 4) highly offensive. Larsen v. Philadelphia Newspapers, Inc., 543 A.2d 1181, 1186-87 (Pa. Super. Ct. 1988); Academy Indust. Inc. v. PNC Bank, N.A., No. 00-2383, 2002 WL 1472342, *18 (Pa. Commw. Ct. May 20, 2002).

Here, plaintiff fails to state a claim for intrusion upon seclusion as a matter of law. Immaculate Mary had a duty to protect Ms. Primus, a semi-comatose patient under their care. As a result of that duty, it was proper for Immaculate Mary's staff to monitor her bedside and to report potential abuse.

To sustain a cause of action for false light a plaintiff must plead and prove: 1) a widely publicized false statement; 2) that placed plaintiff in a false light; 3) which would have been highly offensive to a reasonable person; 4) that defendant had knowledge of, or acted in reckless disregard as to, the falsity of the publicized matter. See, e.g., Puchalski v. School Dist. of Springfield, 161 F. Supp. 2d 395, 410 (E.D. Pa. 2001); Martin v. Mun. Publications, 510 F. Supp. 255, 259 (E.D. Pa. 1981). The tort of false light differs from a claim of defamation in at least two respects. Publicity must occur to the public at large and the false statement or imputation need not be defamatory. Weinstein v. Bullick, 827 F. Supp. 1193, 1202 (E.D. Pa. 1993).

Under Pennsylvania law, reports of potential threats to public safety are privileged and cannot be the subject of any kind of invasion of privacy claim. See Bartnicki v. Vopper, 532 U.S. 514, 539 (2001) ("the law recognizes a privilege allowing the reporting of threats to public safety"). Section 595 of the Restatement (Second) of Torts, entitled "Protection of Interest of Recipient or A Third Person," states:

(1) An occasion makes a publication conditionally privileged if the

circumstances induce a correct and reasonable belief that

(a) there is information that affects a sufficiently important interest of the recipient or a third party, and

(b) the recipient is one to whom the publisher is under a legal duty to publish the defamatory matter or is a person to whom its publication is otherwise within the generally accepted standards of decent conduct.

Restatement (Second) of Torts § 595.

Mr. Skinner reported to pertinent authorities that there had been a report of plaintiff sexually abusing his daughter. Being director of the nursing home where Ms. Primus was a patient, Mr. Skinner was under a duty to protect her from harm and abuse. Here, he received a report from a nurse that she had seen plaintiff inappropriately touching his daughter. Mr. Skinner investigated the matter and found some evidence to support its validity. At least one other nurse on a prior occasion had seen plaintiff with his hands inexplicably under his daughter's bed sheets. He had to report the allegation to the proper authorities to protect Ms. Primus. Such actions are protected from invasion of privacy claims for the above reasons listed in Section 595 of the Restatement (Second) of Torts. Mr. Skinner's actions were appropriate and required by law and cannot be subject to a claim for false light invasion of privacy.

Intentional Infliction of Emotional Distress

In order to prevail on a claim of intentional infliction of emotional distress in Pennsylvania, a plaintiff must demonstrate that a defendant's conduct: 1) was intentional or reckless; 2) was extreme or outrageous; 3) actually caused the distress; and 4) caused distress that was severe. Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988).

"The gravamen of the tort of intentional infliction of emotional distress is outrageous

conduct on the part of the tortfeasor." Kazatsky v. King David Memorial Park, Inc., 527 A.2d 988, 991 (Pa. 1987). Recovery on this cause of action is allowed "only in limited circumstances where the conduct has been clearly outrageous." Cox, 861 F.2d at 395. Pennsylvania courts have held that to constitute clearly outrageous conduct, the communication must be "go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." Olender v. Twp. of Bensalmen, 32 F. Supp. 2d 775, 792 (E.D. Pa.), aff'd, 202 F.3d 254 (3d Cir. 1999) (quoting Hoy v. Angelone, 720 A.2d 745, 753-54 (Pa. 1988)). Moreover, courts are reluctant to make factually accurate disclosures tortious, except where the communication lacks any meritorious public interest and it is plainly offensive to one of ordinary sensibilities. Jenkins v. Dell Pub. Co., 251 F.2d 447, 450 (3d Cir. 1958).

Immaculate Mary's conduct in reporting the allegations against Mr. Skinner was not extreme, outrageous, or utterly intolerable in a civilized society. Immaculate Mary had a duty to report any allegation of abuse to relevant authorities in order to protect its patient, Ms. Primus, from risk of bodily harm. Before entering the report, Mr. Skinner conducted a short investigation to confirm its accuracy. In filing the report, he was abiding by his legal requirements, as well as acting to protect a semi-comatose patient. Accordingly, the report was neither reckless nor outrageous and cannot form the basis for a claim of intentional infliction of emotional distress.

Additionally, the "distress" element of this tort requires that there be actual physical injury as a result of the outrageous conduct. Katzasky v. King David Memorial Park, Inc., 527 A.2d 988, 995 (Pa. 1987); see also Tuman v. Genesis Assocs., 894 F. Supp. 183, 189 (E.D. Pa. 1994). Any alleged physical injury must be demonstrated through objective testimony and medical evidence. Katzasky, 527 A.2d at 995. In his initial complaint plaintiff alleges that as a

result of the allegations against him, "plaintiff suffers severe mental anguish, psychological and emotional distress, and physical pain and suffering . . ." (Complaint ¶ 34.) Plaintiff has no evidence to support these base allegations.

False Imprisonment

In order to prevail on a claim for false imprisonment in Pennsylvania, a plaintiff must demonstrate that a defendant: 1) acted intending to confine a person within boundaries fixed by the defendant; 2) the defendant's act directly or indirectly resulted in such confinement of that person; and 3) the person confined is conscious or the confinement or is harmed by it. Caswell v. BJ's Wholesale Co., 5 F. Supp. 2d 312, 319 (E.D. Pa. 1998); Krochalis v. Ins. Co. of North America, 629 F. Supp. 1360, 1370 (E.D. Pa. 1985).

Plaintiff has not alleged that Mr. Skinner intended to confine him within set boundaries as is required to prove this tort. Mr. Skinner merely made a factually accurate report of Ms. Roberts's allegation, and made no conclusion regarding inappropriateness or illegality of the conduct. Even if he thought that Mr. Primus might be arrested and confined, there was no substantial certainty that such result would occur, and thus, the claim for false imprisonment fails as a matter of law. See Restatement (Second) of Torts § 35 cmt. d.

Malicious Prosecution

In order to prevail on a claim for malicious prosecution in Pennsylvania, a plaintiff must demonstrate that: 1) the underlying criminal proceedings terminated in plaintiff's favor; 2) there was no probable cause for the criminal proceedings; 3) the proceedings were initiated with malice, primarily for a purpose other than bringing an offender to justice. Hornin v. Montgomery Ward & Co., 120 F.2d 500, 503 (3d Cir. 1941).

Plaintiff did not plead that Mr. Skinner acted with malice, rather alleging that he acted "recklessly - or at least negligently. . . ." (Pl.'s Mem. of Law in Opp'n to Summ. Jud. at 29.) However, the elements of this tort specifically require that a plaintiff establish a defendant acted with malice. Thus, one who acts, even recklessly or negligently, as long as he believed the information to be true, cannot be guilty of this tort. The tort elements prevent the person whose information or accusation led the officer to initiate the proceeding, even if a reasonable person would not have believed that information to be true or it turns out to be false. Bradley v. General Acc. Ins. Co., 778 A.2d 707, 711 (Pa. Super. Ct. 2001). Thus, when one, such as Mr. Skinner, conveys knowledge he believes to be accurate, he is not liable under the tort malicious prosecution as a matter of law.

Plaintiff argues that under Pennsylvania law, a factfinder may infer malice from the absence of probable cause. Lippay v. Christos, 996 F.2d 1490 (3d Cir. 1993). He states that Mr. Skinner "provided false information when he suggested that two nurses on separate occasions might have witnessed Mr. Primus molesting his daughter, and then later concealed exculpatory evidence by never sending the Jones letter or the George memo to Detective Burnosky." (Pl.'s Mem. of Law in Opp'n to Summ. Jud. at 36.) However, this information was true Ms. Jones (Imm. Mary's Ex. 12) and Ms. George (Imm. Mary's Ex. 9) had each informed Mr. Skinner that they also had seen Mr. Primus with his hands under his daughter's sheets. Regardless of whether Mr. Skinner provided their statements to Detective Burnosky, the information that was provided in the report to state authorities was not known by him to be false.

Abuse of Process

In order to prevail on a claim for abuse of process in Pennsylvania, a plaintiff must

demonstrate that: 1) a defendant used legal process against the plaintiff; 2) the process was used primarily to accomplish a purpose for which the process was not designed; and 3) such usage resulted in harm to the plaintiff. Psinakis v. Psinakis, 221 F.2d 418 (3d Cir. 1995).

Legal process refers to a summons, writ, warrant, or other process issuing from a court. Black's Law Dictionary, 1084-85 (5th ed. 1979). It is well established that a claim for abuse fo process is not supported by allegations of improper or wrongful use of process after the suit has been initiated. Feldman v. Trust Co. Bank, No. 93-1260, 1993 WL 405831, at *4 (E.D. Pa. Oct. 4, 1993). Immaculate Mary cannot be held liable under an abuse of process theory because it did not use "process" against plaintiff. The report issued by Immaculate Mary to the applicable state organizations does not fall under the Commonwealth's definition of "process." Thus, plaintiff's claim against Immaculate Mary for abuse of process fails as a matter of law.

Conclusion

For all the foregoing reasons, plaintiffs has failed to present any evidence to create a genuine issue of material fact. Accordingly, summary judgment is granted in favor of defendant Detective Burnosky and defendant Immaculate Mary, and against plaintiff.

An appropriate order follows.